

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 11-26-96 BY

REASON: [REDACTED]

6000

CP:E:EO:T:2

SEP 30 1996

Employer Identification Number: [REDACTED]

Key District: Northeast (Brooklyn, NY)

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted shows that you were incorporated under the nonprofit laws of the State of [REDACTED] on [REDACTED].

The information submitted shows that you are raising funds for charitable organizations by selling "break-open tickets" in a for-profit cabaret which is owned by the same individuals that control you. The break-open tickets are sold by the employees of the cabaret. Your officers, directors and incorporators are the [REDACTED] family. The related for-profit organization is [REDACTED].

Your projected expenses for 1995 and 1996 are \$[REDACTED] and \$[REDACTED]. You anticipate paying a total of \$[REDACTED] for occupancy in these years. You project contributing \$[REDACTED] in 1995 and \$[REDACTED] in 1996 to charities. Your financial statements also show that you own a pool table.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any individual.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. An organization that fails to meet either the organizational or the operational test is not exempt.

Section 1.501(c)(3)-1(c) of the regulations provides that an organization will not be regarded as "operated exclusively" for one or more exempt purposes if more than an insubstantial part of its activities is not in furtherance of a purpose described in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not operated exclusively for one or more purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size of the trade or business which are in furtherance of one or more exempt purposes.

The presence of a single purpose not described in section 501(c)(3) of the Code, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S., 326 U.S. 279 (1945), Ct. D. 1650, 1945 C.B. 375.

Although an incidental private benefit will not destroy the qualifications of an otherwise educational organization, where an organization is serving both public and private interests the private benefit must be clearly incidental to the overriding public interest. A contrary finding will indicate that the organization is serving private interests. Benedict Ginsberg v. Commissioner, 46 T.C. 47 (1966).

The information submitted shows that you are selling "break-open tickets" and operating a pool table. The tickets are sold by the employees of the for-profit organization. Your officers and directors are interrelated with the for-profit organization. By selling the "break-open tickets" in the matter described and operating a pool table, you are increasing the business and profit of the for-profit organization. In addition, the for-profit organization is charging you an occupancy fee for increasing its profit. You are only proposing to contribute \$■ and \$■ to charities in 1995 and 1996. Thus, over ■% of your fund-raising expenses excluding prizes will go to the related for-profit organization. Thus, it is our conclusion that you are

operated to serve the private interests of your officers and directors and the related for-profit business in more than an insubstantial way.

Accordingly, it is our conclusion that you have not established that you are operated exclusively for one or more purposes as specified in section 501(c)(3) of the Code. Thus, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

[REDACTED]

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
Attn: [Ray Seeley, CP:E:EO:T:2, Rm. 6138]  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) [REDACTED]

[REDACTED]  
Acting Chief, Exempt Organizations  
Technical Branch 2